

AN ACT

ENTITLED, An Act to revise certain cross references in the code with regard to the implementation of the South Dakota Business Corporation Act and to provide for an exception to the repealers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 36-21A-55 be amended to read as follows:

36-21A-55. The holding of a license issued under the provisions of this chapter or participating in a transaction for which a license is required by this chapter is the transaction of business within the state, and a nonresident licensee or unlicensed person so defined is subject to the personal jurisdiction of the courts of this state as provided by § 15-7-2.

Service of process shall be made upon corporate licensees as provided by section 52 of Senate Bill 70 previously enacted by the 2005 Legislature, and section 362 of Senate Bill 70 previously enacted by the 2005 Legislature, and otherwise as provided by chapter 15-6.

Any person licensed under this chapter shall deliver a copy of any process or pleading to which that licensee is a party to the executive director of the commission within ten days of its being served by or upon him. Failure to file with the executive director is not jurisdictional in any action to which a licensee under this chapter may be a party.

Section 2. That § 37-28-1 be amended to read as follows:

37-28-1. Terms used in this chapter, unless the context otherwise plainly requires, mean:

- (1) "Act of Congress," the Act of Congress approved June 18, 1934, entitled an act to provide for the establishment, operation and maintenance of foreign trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes, as amended, and commonly known as the Foreign Trade Zones Act of 1934;
- (2) "Private corporation," a corporation organized under sections 1 to 193, inclusive, sections 235 to 247, inclusive, and sections 272 to 279, inclusive, of Senate Bill 70 previously

enacted by the 2005 Legislature, one of the purposes of which is to establish, operate and maintain a foreign trade zone by itself or in conjunction with a public corporation;

- (3) "Public corporation," this state; a political subdivision of this state; any municipality therein; any public agency of the state, of any public subdivision in the state or of any municipality in the state; or any other corporate instrumentality of this state.

Section 3. That § 47-10-24 be amended to read as follows:

47-10-24. The provisions of sections 1 to 193, inclusive, sections 308 to 346, inclusive, and sections 371 to 389, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature shall apply to corporations incorporated under this chapter, insofar as they may be applicable and not inconsistent with this chapter.

Section 4. That § 47-13A-1 be amended to read as follows:

47-13A-1. One or more lawyers licensed pursuant to chapter 16-16 may form professional service corporations for the practice of law under sections 1 to 193, inclusive, sections 308 to 346, inclusive, and sections 371 to 389, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature, or may form limited liability companies under the South Dakota Limited Liability Company Act, providing that such corporations and limited liability companies are organized and operated in accordance with the provisions of this chapter. In any corporation formed under this chapter one or more persons may act as the sole stockholders, directors or officers of such corporation. However, any limited liability company formed under this chapter shall comply with the South Dakota Limited Liability Act, as amended.

Section 5. That § 47-20-13 be amended to read as follows:

47-20-13. The secretary of state shall charge and collect the fees provided by sections 7 and 8 of Senate Bill 70 previously enacted by the 2005 Legislature, for filing the instruments and issuing the certificates relating to domestic corporations therein provided. The fees applicable to amended

articles of incorporation shall apply to restated articles of incorporation and fees applicable to the articles of incorporation shall apply to articles of merger or consolidation.

Section 6. That § 47-20-14 be amended to read as follows:

47-20-14. The secretary of state shall charge and collect the fees provided by sections 7 and 8 of Senate Bill 70 previously enacted by the 2005 Legislature for filing instruments and issuing certificates relating to foreign corporations.

Section 7. That § 47-33-3 be amended to read as follows:

47-33-3. (1) Terms used in this chapter mean:

(a) "Acquiring person," a person that makes or proposes to make a control share acquisition.

If two or more persons act as a partnership, limited partnership, syndicate or other group pursuant to any written or unwritten agreement, arrangement, relationship, understanding or otherwise, for the purposes of acquiring, owning or voting shares of a domestic public corporation, all members of the partnership, syndicate or other group constitute a "person." "Acquiring person" does not include:

(i) A licensed broker/dealer or licensed underwriter who

(A) Purchases shares of a domestic public corporation solely for the purposes of resale to the public; and

(B) Is not acting in concert with an acquiring person; or

(ii) A person who becomes entitled to exercise or direct the exercise of a new range of voting power within any of the ranges specified in subdivision 47-33-9(4) solely as a result of a repurchase of shares by, or recapitalization of, the domestic public corporation or similar action unless:

(A) The repurchase, recapitalization or similar action was proposed by or on behalf of, or pursuant to any written or unwritten agreement, arrangement,

relationship, understanding, or otherwise with, the person or any affiliate or associate of the person; or

(B) The person thereafter acquires beneficial ownership, directly or indirectly, of outstanding voting shares of the domestic public corporation and, immediately after the acquisition, is entitled to exercise or direct the exercise of the same or a higher range of voting power under subdivision 47-33-9(4) as the person became entitled to exercise as a result of the repurchase, recapitalization, or similar action;

- (b) "Affiliate," a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a specified person;
- (c) "Announcement date," if used in reference to any business combination, means the date of the first public announcement of the final, definitive proposal for the business combination;
- (d) "Articles," the original or restated articles of incorporation and all amendments thereto;
- (e) "Associate," if used to indicate a relationship with any person, means any of the following:
 - (i) Any corporation or organization of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class or series of its equity securities;
 - (ii) Any trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity;
 - (iii) Any relative or spouse of the person, or any relative of the spouse residing in the home of the person;
- (f) "Beneficial owner," if used with respect to any equity security, means a person:

- (i) That, individually or with or through any of its affiliates or associates, beneficially owns an equity security, directly or indirectly;
- (ii) That, individually with or through any of its affiliates or associates has:
 - (A) The right to acquire an equity security, whether that right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, relationship or understanding, whether written or unwritten, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise. However, a person may not be deemed the beneficial owner of shares tendered pursuant to a tender or exchange offer made by that person or any of that person's affiliates or associates until those tendered shares are accepted for purchase or exchange; or
 - (B) The right to vote an equity security pursuant to any agreement, arrangement, relationship or understanding, whether written or unwritten. However, a person may not be deemed the beneficial owner of any shares under this subparagraph if the agreement, arrangement, relationship or understanding to vote the shares (1) arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the Exchange Act, and (2) is not then reportable on a Schedule 13D under the Exchange Act or any comparable or successor report; or
- (iii) That has any agreement, arrangement, relationship or understanding, whether written or unwritten, for the purpose of acquiring, holding, voting (except voting under a revocable proxy or consent described in subparagraph (ii)(B) of this subsection), or disposing of an equity security with any other person that

beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the equity security;

- (g) "Board," the board of directors of a corporation;
- (h) "Business combination," if used in reference to a domestic public corporation and any interested shareholder of the domestic public corporation, means any of the following:
 - (i) Any merger or consolidation of the domestic public corporation or any subsidiary of the domestic public corporation with:
 - (A) The interested shareholder; or
 - (B) Any other foreign or domestic corporation (whether or not itself an interested shareholder of the domestic public corporation) that is, or after the merger or consolidation would be, an affiliate or associate of the interested shareholder, but excluding (1) the merger of a wholly-owned subsidiary of the domestic public corporation into the domestic public corporation, (2) the merger of two or more wholly-owned subsidiaries of the domestic public corporation, or (3) the merger of a domestic or foreign corporation, other than an interested shareholder or an affiliate or associate of an interested shareholder, with a wholly-owned subsidiary of the domestic public corporation pursuant to which the surviving corporation, immediately after the merger, becomes a wholly-owned subsidiary of the domestic public corporation;
 - (ii) Any exchange, pursuant to a plan of exchange under the laws of this state or a comparable statute of any other state or jurisdiction, of shares of the domestic public corporation or any subsidiary of the domestic public corporation for equity securities of either (i) the interested shareholder; or (ii) any other domestic or

foreign corporation, whether or not itself an interested shareholder of the domestic public corporation, that is, or after the exchange would be, an affiliate or associate of the interested shareholder;

- (iii) Any sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one transaction or a series of transactions, to or with the interested shareholder or any affiliate or associate of the interested shareholder, of assets of the domestic public corporation or any subsidiary of the domestic public corporation to which any of the following applies;
 - (A) Having an aggregate market value equal to ten percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the domestic public corporation;
 - (B) Having an aggregate market value equal to ten percent or more of the aggregate market value of all the outstanding shares of the domestic public corporation; or
 - (C) Representing ten percent or more of the earning power or net income, determined on a consolidated basis, of the domestic public corporation;
- (iv) The issuance or transfer by the domestic public corporation or any subsidiary of the domestic public corporation, in one transaction or a series of transactions, of any shares of the domestic public corporation or any subsidiary of the domestic public corporation that have an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the domestic public corporation to the interested shareholder or any affiliate or associate of the interested shareholder, except pursuant to the exercise of rights or options to purchase shares offered, or a dividend or distribution paid or made, pro rata to all

shareholders of the domestic public corporation other than for the purpose, directly or indirectly, of facilitating or effecting a subsequent transaction that would have been a business combination if the dividend or distribution had not been made;

- (v) The adoption of any plan or proposal for the liquidation or dissolution of the domestic public corporation, or any reincorporation of the domestic public corporation in another state or jurisdiction, proposed by or on behalf of, or pursuant to any written or unwritten agreement, arrangement, relationship, understanding or otherwise with, the interested shareholder or any affiliate or associate of the interested shareholder;
- (vi) Any reclassification of securities, including any share dividend or split, reverse share split, or other distribution of shares in respect of shares, any recapitalization of the domestic public corporation, any merger or consolidation of the domestic public corporation with any subsidiary of the domestic public corporation, or any other transaction, whether or not with or into or otherwise involving the interested shareholder, proposed by, on behalf of, or pursuant to any written or unwritten agreement, arrangement, relationship, understanding or otherwise with, the interested shareholder or any affiliate or associate of the interested shareholder, that has the effect, directly or indirectly, of increasing the proportionate amount of the outstanding voting shares of any class or series, or securities that are exchangeable for or convertible into, or carry the right to acquire voting shares, of the domestic public corporation or any subsidiary of the domestic public corporation that is, directly or indirectly, owned by the interested shareholder or any affiliate or associate of the interested shareholder, except as a result of immaterial changes due to fractional share adjustments; or

- (vii) Any receipt by the interested shareholder or any affiliate or associate of the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of the domestic public corporation, of any loans, advances, guarantees, pledges or other financial assistance, or any tax credits or other tax advantages provided by or through the domestic public corporation. However, the term "business combination" may not be deemed to include the receipt of any of the foregoing benefits by that domestic public corporation or any of that corporation's subsidiaries arising from transactions, such as intercompany loans or tax sharing arrangements, between that domestic public corporation and its subsidiaries in the ordinary course of business;
- (i) "Common shares," any shares other than preferred shares;
- (j) "Consummation date," with respect to any business combination, the date of consummation of the business combination or, in the case of a business combination as to which a shareholder vote is taken, the later of:
- (i) The business day before the vote; or
- (ii) Twenty days before the date of consummation of business combination;
- (k) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. A person's beneficial ownership of ten percent or more of the voting power of a corporation's outstanding voting shares creates a presumption that the person has control of the corporation. Notwithstanding the foregoing, a person is not considered to have control of a corporation if the person holds voting shares, in good faith and not for the purpose of circumventing this chapter, as an

agent, bank, broker, nominee, custodian or trustee for one or more beneficial owners who do not individually or as a group have control of the corporation;

(l) "Control share acquisition," an acquisition, directly or indirectly, by an acquiring person of beneficial ownership of shares of a domestic public corporation that, except for § 47-33-8, would, if added to all other shares of the domestic public corporation beneficially owned by the acquiring person, entitle the acquiring person, immediately after the acquisition, to exercise or direct the exercise of a new range of voting power within any of the ranges specified in subdivision 47-33-9(4) but does not include any of the following:

- (i) An acquisition before, or pursuant to a contract entered into before, February 21, 1990;
- (ii) An acquisition by a donee pursuant to an inter vivos gift not made to avoid this chapter or by any person who acquires the shares of a decedent from the representative of the decedent's estate other than as a creditor or purchaser; or
- (iii) An acquisition pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this chapter;
- (iv) An acquisition pursuant to a merger, consolidation or share exchange effected under sections 248 to 271, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature, if the domestic public corporation is a party to the transaction;
- (v) An acquisition for the benefit of others by a person acting in good faith and not made to avoid this chapter, to the extent that the person may not exercise or direct the exercise of the voting power or disposition of the shares except upon the instruction of others;
- (vi) The acquisition of shares of a domestic public corporation, in good faith, and not

for the purpose of circumventing this chapter, by or from any person whose voting rights had previously been authorized by shareholders in compliance with this chapter, or any person whose previous acquisition of shares of a domestic public corporation would have constituted a control share acquisition but for one or more of the exceptions stated in subparagraphs (i) through (v) of this definition, unless the acquisition entitles the acquiring person, directly or indirectly, alone or as part of a group, to exercise or direct the exercise of voting power of the domestic public corporation in the election of directors in excess of the range of voting power previously authorized by the shareholders pursuant to § 47-33-12.

All shares the beneficial ownership of which is acquired within a ninety-day period, and all shares the beneficial ownership of which is acquired pursuant to a plan to make a control share acquisition, shall be deemed to have been acquired in the same acquisition;

- (m) "Corporation" and "domestic corporation," a corporation for profit incorporated under the laws of this state;
- (n) "Domestic public corporation," a corporation organized under the laws of this state that is a publicly held corporation, has more than fifty shareholders, and which:
 - (i) Has either its principal place of business or its principal executive office located in this state, and owns or controls assets located in this state having a fair market value of at least one million dollars and has more than one hundred employees in this state; or
 - (ii) Has more than five percent of its shareholders resident in this state, has more than five percent of its shares owned by residents in this state, or has more than two hundred fifty shareholders resident in this state.

For the purpose of subparagraph (ii) of this subsection, the residence of each shareholder

is the address of the shareholder which appears on the records of the domestic public corporation;

(o) "Equity security,":

- (i) Any share or similar security, any certificate of interest, any participation in any profit sharing agreement, any voting trust certificate, or any certificate of deposit for an equity security; and
- (ii) Any security convertible, with or without consideration, into an equity security, or any warrant, call or other option or privilege of buying an equity security without being bound to do so, or any other security carrying any right to acquire, subscribe to, or purchase an equity security;

(p) "Exchange Act," the Securities Exchange Act of 1934, (48 Stat. 881, 15 U.S.C. § 78a et seq.) as amended;

(q) "Interested shareholder," if used in reference to any domestic public corporation, any person, other than the domestic public corporation or any subsidiary of the domestic public corporation, that is either:

- (i) The beneficial owner, directly or indirectly, of ten percent or more of the outstanding voting shares of the domestic public corporation; or
- (ii) Is an affiliate or associate of the domestic public corporation and at any time within the four-year period immediately before the date in question was the beneficial owner, directly or indirectly, of ten percent or more of the then outstanding voting shares of the domestic public corporation;

For the purposes of determining whether a person is an interested shareholder, the number of voting shares of the domestic public corporation considered to be outstanding includes shares considered to be beneficially owned by the person through the application of

subsection (f) of this section, but does not include any other unissued voting shares of the domestic public corporation which may be issuable pursuant to any agreement, arrangement, or understanding, or upon the exercise of rights, options, conversion rights, or otherwise;

(r) "Interested shares," the shares of a domestic public corporation owned by any of the following persons:

- (1) The acquiring person or its affiliates or associates;
- (2) Any officer of the domestic public corporation; or
- (3) Any employee of the domestic public corporation who is also a director of the domestic public corporation;

(s) "Market value," if used in reference to shares or property of any domestic public corporation, the following:

- (i) In the case of shares, the highest closing sale price of a share during the thirty-day period immediately preceding the date in question on the composite tape for New York Stock Exchange listed shares, or, if the shares are not quoted on the composite tape or not listed on the New York Stock Exchange, on the principal United States securities exchange registered under the Exchange Act on which the shares are listed, or, if the shares are not listed on any such exchange, the highest closing bid quotation with respect to a share during the thirty-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share as determined by the board of the domestic public corporation in good faith; and
- (ii) In the case of property other than cash or shares, the fair market value of the

property on the date in question as determined in good faith by the board of the domestic public corporation;

- (t) "Person," an individual, corporation, limited liability company, partnership, unincorporated association, organization or other entity;
- (u) "Preferred shares," any class or series of shares of a domestic public corporation that under the bylaws or articles of incorporation of the domestic public corporation:
 - (i) Is entitled to receive payment of dividends before any payment of dividends on some other class or series of shares; or
 - (ii) Is entitled in the event of any voluntary liquidation, dissolution or winding up of the corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of shares;
- (v) "Publicly held corporation," a corporation that has a class of equity securities registered pursuant to § 12 of the Exchange Act, or subject to § 15(d) of the Exchange Act;
- (w) "Share," one of the units, however designated, into which the shareholders' proprietary interests in the corporation are divided;
- (x) "Share acquisition date," with respect to any person and any domestic public corporation, the date that the person first becomes an interested shareholder of the domestic public corporation;
- (y) "Shareholder," one who is a holder of record of shares in a corporation;
- (z) "Subsidiary," of a specified corporation, any other corporation of which a majority of the outstanding voting shares entitled to be cast is owned, directly or indirectly, by the specified corporation;
- (aa) "Voting shares," shares of a corporation entitled to vote generally in the election of directors;

(2) Terms in this chapter mean:

- (a) "Board," the board of directors of a corporation;
- (b) "Class," if used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation;
- (c) "Director," a member of the board;
- (d) "Good faith," honesty in fact in the conduct of the act or transaction concerned;
- (e) "Intentionally," that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person intentionally violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statutes, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the term used in the statute;
- (f) "Knows," or has "knowledge," has actual knowledge of it. A person does not know of a fact merely because the person has reason to know of the fact;
- (g) "Notice," is given by a corporation to a person when mailed to the person at the last known address of the person, when communicated to the person orally, when handed to the person, when left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office, or if the office is closed or the person to be notified has no office, or when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein. Notice is given to a corporation when mailed or delivered to it at its registered office. Notice by mail is given when deposited in the United States

mail with sufficient postage affixed;

- (h) "Officer," a person elected, appointed, authorized, or otherwise designated as an officer by the board, and any other person considered elected as an officer;
- (i) "Organization," a domestic or foreign corporation partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise and any other legal or commercial entity;
- (j) "Outstanding shares," all shares duly issued and not reacquired by a corporation;
- (k) "Series," a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

Section 8. That § 47-9A-1 be amended to read as follows:

47-9A-1. The Legislature of the State of South Dakota recognizes the importance of the family farm to the economic and moral stability of the state, and the Legislature recognizes that the existence of the family farm is threatened by conglomerates in farming. Therefore, it is hereby declared to be the public policy of this state, and shall be the provision of this chapter, that, notwithstanding the provisions of section 37 of Senate Bill 70 previously enacted by the 2005 Legislature, no foreign or domestic corporation, except as provided herein, shall be formed or licensed under the South Dakota Business Corporation Act for the purpose of owning, leasing, holding or otherwise controlling agricultural land to be used in the business of agriculture.

It is further declared that no foreign or domestic limited liability company, except as provided herein, shall be formed or licensed under the South Dakota Limited Liability Company Act for the purpose of owning, leasing, holding or otherwise controlling agricultural land to be used in the business of agriculture.

Section 9. That § 49-33-1 be amended to read as follows:

49-33-1. Any number of persons, not less than three, may form a corporation for the purpose of constructing, maintaining and operating a street railway or railways or for the purpose of generating, transmitting or distributing electricity, the same to be sold to or used by the public for heat, light or power, by making and executing articles of incorporation in compliance with sections 28 to 31, inclusive, and sections 74 to 76, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature. Such corporation shall exist perpetually unless otherwise stated in its articles of incorporation and shall have the power to engage in other businesses set forth therein.

Any corporation organized under chapter 49-33 may at any time restate its articles of incorporation as theretofore amended by a resolution adopted by its board of directors. The secretary of state shall accept the restated articles of incorporation for filing upon receipt of a certified copy of said resolution.

Section 10. That § 49-33-23 be amended to read as follows:

49-33-23. Notwithstanding the provisions of sections 53 to 85, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature, a corporation, now or hereafter formed under the provisions of this chapter may provide in its articles of incorporation, or in any amendment thereof, for the issuance of preferred stock in series and authorize the board of directors (within the limits, if any, prescribed in such articles of incorporation or amendment) to fix certain or all of the characteristics and rights thereof.

Section 11. That § 49-33-30 be amended to read as follows:

49-33-30. Any corporation organized under chapter 49-33 may merge with any one or more other corporations, domestic or foreign, into a single corporation, which may be any one of the constituent corporations, or may consolidate with any such corporations into a new corporation formed by the consolidation. Each of the constituent corporations shall enter into a plan of merger or consolidation.

Such plan shall, in the case of each corporation organized under this chapter, first be approved by the board of directors of each such corporation and shall thereafter be submitted to and approved by each such corporation by a vote of the stockholders holding a majority, or such greater percentage as is provided in its articles of incorporation, of each class of the corporation's outstanding stock entitled to vote thereon under the corporation's articles of incorporation at an annual or special meeting of stockholders called by the board of directors for the purpose of acting on the plan. Such consolidation or merger shall otherwise be in conformance with and enjoy the benefits of sections 248 to 271, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature.

Section 12. That § 49-33-5.1 be amended to read as follows:

49-33-5.1. In addition to all provisions and powers in chapters 49-33 and 49-34 which are applicable to corporations organized thereunder, all provisions and powers set forth in the South Dakota Business Corporation Act, sections 1 to 193, inclusive, sections 308 to 346, inclusive, and sections 371 to 389, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature, applicable to domestic corporations are also applicable to corporations which have been or will be organized under chapters 49-33 and 49-34 except if in conflict with the express provisions of chapters 49-33 and 49-34.

Section 13. That § 49-34-11 be amended to read as follows:

49-34-11. Any trust deed or mortgage executed by a corporation organized under the provisions of chapter 49-33 or qualified in accordance with the provisions of sections 347 to 370, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature relative to the qualification of foreign corporations to transact business in this state, and carrying on a street railway, natural or artificial gas or electric public utility business shall be filed and recorded in the office of the secretary of state and such filing for record thereof shall create a lien upon such property, real and personal, from the time of such filing, and shall have the same effect, as to any property in this state described therein,

as the record or filing of any similar instrument in the office of the register of deeds as to property in his county as if it were filed or recorded in each and every county in which any property therein described may be situated, and such filing and recording in the office of the secretary of state shall be the only recording or filing required. The deeds of trust or mortgages may by their terms include after-acquired real and personal property, and are as valid and effectual for that purpose as if this after-acquired property were owned by, and in possession of, the corporation giving the deed of trust or mortgage at the time of its execution.

Section 14. That § 49-34-11.1 be amended to read as follows:

49-34-11.1. As used in §§ 49-34-11.1 to 49-34-11.4, inclusive, the term "public utility" means a corporation, its lessees, its trustees and receivers, operating, maintaining or controlling in this state after July 1, 1967, equipment or facilities for the production, generation, transmission or distribution at retail of gas or electric service for the public and in the transmission and distribution using, or having a right to use, public roads, streets, alleys, or other public ways for the purpose of constructing, using, operating or maintaining wires, pipes, conduits or other facilities, which corporation is organized under the provisions of chapter 49-33 or is qualified in accordance with the provisions of sections 347 to 370, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature as a foreign corporation authorized to transact business in this state.

Section 15. That § 5-19-3.2 be amended to read as follows:

5-19-3.2. The Bureau of Administration shall maintain a list of all foreign corporations licensed pursuant to sections 347 to 370, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature which are not considered resident bidders under chapter 5-19.

Section 16. That § 5-19-4 be amended to read as follows:

5-19-4. "Resident," as used in this chapter means any person who has been a bona fide resident of the state for one year or more immediately prior to bidding upon the contract; a partnership or

association the majority of the members of which have been bona fide residents of the state for one year or more immediately prior to bidding upon the contract; a limited liability company organized under the laws of this state; a foreign limited liability company licensed to do business within this state pursuant to chapter 47-34A; a corporation organized under the laws of this state; a foreign corporation licensed to do business within this state pursuant to sections 347 to 370, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature. All of the persons, partnerships, associations, limited liability companies, foreign limited liability companies, corporations, and foreign corporations licensed to do business within this state shall have maintained a substantial and bona fide place of business and have conducted business therefrom within this state for at least one year prior to the date on which a contract was awarded. A foreign corporation licensed pursuant to sections 347 to 370, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature is not a resident as defined by this section if the state or country in which it is organized enforces or has a preference for resident bidders.

Section 17. That § 51A-14-7 be amended to read as follows:

51A-14-7. The provisions of sections 266 to 270, inclusive, and sections 281 to 307, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature apply when establishing the valuation of shares of bank stock owned by dissident shareholders.

Section 18. That § 51A-15-44 be amended to read as follows:

51A-15-44. When the assets have been distributed in accordance with this chapter, the director or receiver shall file an account with the circuit court. Upon approval thereof, the director or receiver shall be relieved of liability in connection with the liquidation and the court shall cancel the charter and enter an order of dissolution. The filing of a certified copy of such order with the secretary of state shall be deemed authority for the issuance of a certificate of dissolution.

Section 19. That § 51A-15-9 be amended to read as follows:

51A-15-9. The director may require reports of the progress of a bank engaged in voluntary liquidation and whenever he is satisfied that the liquidation has been properly completed he shall cancel the charter and enter an order of dissolution. The filing of a certified copy of such order with the secretary of state shall be deemed authority for the issuance of a certificate of dissolution.

Section 20. That § 51A-3-22 be amended to read as follows:

51A-3-22. A bank may amend its articles of incorporation in the manner provided under sections 1 to 193, inclusive, sections 235 to 247, inclusive, and sections 272 to 279, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature, upon amendment certified by its president, except that prior approval of the director shall be required for a bank to: change its name or location; acquire or abandon trust powers; change the number or par value of its shares of stock; change the amount of capital; or, extend its corporate existence. Such approval must be based upon a finding that the security of existing creditors will not be impaired by the proposed action. All such amendments shall be filed in the same manner as provided for original articles of incorporation.

Section 21. That § 51A-3-31 be amended to read as follows:

51A-3-31. A bank may indemnify by purchase of insurance or otherwise any current or former officer, director, employee or agent, his heirs, executors and administrators and successors in interest in the same manner and to the same extent as a business corporation may indemnify, pursuant to the provisions of sections 1 to 193, inclusive, sections 235, to 247, inclusive, and sections 272 to 279, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature.

Section 22. That § 51A-5-9 be amended to read as follows:

51A-5-9. Before qualifying or serving in this state in any fiduciary capacity, as defined in § 51A-5-8, the bank or trust company shall file in the Office of the Secretary of State of South Dakota, a copy of its charter certified by its secretary under its corporate seal, and a power of attorney designating the secretary of state or the secretary of state's successor in office as the person upon

whom all notices and processes issued by any court of this state may be served in any action or proceeding relating to any trust, estate, or matter within this state in respect of which the bank or trust company is acting in any fiduciary capacity with like effect as personal service on the bank or trust company. The power of attorney is irrevocable so long as any liability remains outstanding against the bank or trust company in this state. Service of process under this section may be made in the manner provided in section 362 of Senate Bill 70 previously enacted by the 2005 Legislature.

Section 23. That § 51A-7-18 be amended to read as follows:

51A-7-18. A branch of an out-of-state bank may not be established in South Dakota unless requisite filing fees have been paid and an application as prescribed by the commission has been filed with the commission and after a hearing has been held before the commission pursuant to § 51A-2-16. If the commission approves the application, the director shall issue a certificate of authority after the applicant confirms in writing to the director that as long as it maintains a branch in South Dakota, it will comply with all applicable laws of South Dakota and provides satisfactory evidence to the director of compliance with the applicable laws of sections 347 and 351 of Senate Bill 70 previously enacted by the 2005 Legislature. An out-of-state state bank which establishes and maintains a branch in South Dakota may conduct any activities at the branch that are authorized under the laws of South Dakota for South Dakota state banks, and has all rights and privileges permitted South Dakota state bank branches.

Section 24. That § 52-13-53 be amended to read as follows:

52-13-53. When the assets have been distributed in accordance with this chapter, the director of the Division of Banking files an account with the circuit court. Upon approval thereof, the director is relieved of liability in connection with the liquidation, and the court cancels the charter and enters an order of dissolution. The filing of a certified copy of that order with the secretary of state is considered authority for the issuance of a certificate of dissolution.

Section 25. That § 58-27-62 be amended to read as follows:

58-27-62. In addition to investments excluded pursuant to other provisions of this title, an insurer shall not invest in or lend its funds upon the security of any note or other evidence of indebtedness secured by its own stock as collateral or other than as authorized by §§ 58-27-31, 58-27-36, and 58-27-37, either directly or indirectly, to any of its officers, directors, or affiliates, except that it may make loans of the type described in §§ 58-27-32 to 58-27-40, inclusive, to corporate affiliates, provided that no such loan or loans to an affiliate or affiliates, so made or acquired, shall in the aggregate exceed forty percent of the surplus of the insurer, and no single loan shall exceed twenty percent of such surplus. The real estate involved in any such loan to an affiliate shall be worth at least double the amount loaned thereon, as justified by the appraisal report of an independent, competent, and recognized appraiser or appraisers. The investments authorized by this section may be made notwithstanding the provisions of sections 157 to 163, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature, to the contrary and without liability on the part of the officers and directors specified therein.

Section 26. That § 58-35-61 be amended to read as follows:

58-35-61. Following the adoption of the resolution approving the plan of merger required by § 58-35-60, a meeting of the policyholders of each of the corporations shall be held to vote upon the proposed merger plan. Written notice of the meeting of the policyholders shall be given to all policyholders, which may be either an annual or special meeting. Written notice shall be given to each policyholder of record whether or not entitled to vote at the meeting, not less than twenty days before the meeting, in the manner provided in sections 86 to 135, inclusive, and sections 371 to 389, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature for the giving of notice of meetings of shareholders. Whether the meeting is an annual or special meeting, the notice shall state that the purpose or one of the purposes of the meeting is to consider the proposed plan of merger.

A copy of the resolution passed by the board of directors shall be included in or enclosed with the notice.

Section 27. That § 58-35-69 be amended to read as follows:

58-35-69. If a merger has been effected pursuant to §§ 58-35-60 to 58-35-74, inclusive:

- (1) The several corporations to the plan of merger are a single corporation which is that corporation designated in the plan of merger as the surviving corporation;
- (2) The separate existence of all corporations parties to the plan of merger, except the surviving or new corporation shall cease; and
- (3) The surviving or new corporation has all the rights, privileges, immunities, and powers and is subject to all the duties and liabilities of a corporation organized under §§ 58-35-60 to 58-35-74, inclusive, and sections 1 to 193, inclusive, sections 235 to 247, inclusive, and sections 272 to 279, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature.

Section 28. That § 58-35-74 be amended to read as follows:

58-35-74. The provisions of sections 248 to 271, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature regarding the rights of dissenting members and proxy voting do not apply to mergers of farm mutual insurers pursuant to §§ 58-35-60 to 58-35-74, inclusive.

Section 29. That § 58-37A-14 be amended to read as follows:

58-37A-14. A domestic society may consolidate or merge with any other society by complying with the provisions of this section and the applicable provisions of sections 248 to 271, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature and chapter 58-5. It shall file with the director:

- (1) A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

- (2) A sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the director but not earlier than December thirty-first, next preceding the date of the contract;
- (3) A certificate of the officers, verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme governing body of each society, the vote being conducted at a regular or special meeting of each body, or, if the society's laws permit, by mail; and
- (4) Evidence that at least sixty days before the action of the supreme governing body of each society, the text of the contract had been furnished to all members of each society either by mail or by publication in full in the official publication of each society.

If the director finds that the contract conforms to the provisions of this section, that the financial statements are correct and that the consolidation or merger is just and equitable to the members of each society, the director shall approve the contract and issue a certificate to that effect. Upon approval, the contract shall be in effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. The consolidation or merger is not effective until it has been approved as provided by the laws of the other state or territory and a certificate of approval filed with the director of insurance of this state or, if the laws of the other state or territory contain no such provision, the consolidation or merger is not effective until it has been approved by the director of the other state or territory and a certificate of approval filed with the director of insurance of this state.

Upon the consolidation or merger becoming effective, all the rights, franchises, and interests of the consolidated or merged societies in and to every species of property, real, personal, or mixed, and things in action belonging to the consolidated or merged societies, shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument.

However, conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest in real estate, vested under the laws of this state in any of the societies consolidated or merged, do not revert and are not impaired by reason of the consolidation or merger, but shall vest in the society resulting from the consolidation or merger.

The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that the notice or document has been addressed and mailed, is prima facie evidence that the notice or document has been furnished to the addressees.

Section 30. Notwithstanding the provisions of section 394 of Senate Bill 70, previously enacted by the 2005 Legislature, subdivision 47-5-6(3) remains effective until July 1, 2007.

An Act to revise certain cross references in the code with regard to the implementation of the South Dakota Business Corporation Act and to provide for an exception to the repealers.

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I certify that the attached Act
originated in the

SENATE as Bill No. 217

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 217

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State